



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Town of Hamilton
FOR
Town of Hamilton Sewage Treatment Plant
VPDES Permit No. VA0020974**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Town of Hamilton, regarding the Town of Hamilton Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "Plant" means the Town of Hamilton Sewage Treatment Plant, located at 104 North Rogers Street, Loudoun County, Virginia, from which discharges of treated sewage occur.
10. "Hamilton" or "Town" means the Town of Hamilton, a political subdivision of the Commonwealth of Virginia. The Town of Hamilton is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Individual Permit No. VA0020974, which was issued under the State Water Control Law and the Regulation to the Town of Hamilton on October 1, 2016, and expires on September 30, 2021.
15. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
16. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful

or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "STP" means the sewage treatment plant, and refers to the "Facility" as defined above.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The Town of Hamilton owns the Facility. The Permit allows the Town of Hamilton to discharge treated sewage from the Facility, to an unnamed tributary of the South Fork of Catoctin Creek, in strict compliance with the terms and conditions of the Permit.
2. The unnamed tributary to the South Fork of Catoctin Creek is located in the Potomac River Basin. The nearest downstream monitoring station from the Facility is located approximately 1.7 miles downstream from the outfall, on the South Fork of Catoctin Creek Run. This segment of the South Fork of Catoctin Creek is listed DEQ's 2016 305(b) report as impaired for the recreation use (*E. coli* bacteria), and there is a fecal coliform Total Maximum Daily Load (TMDL) that has been completed and approved for the South Fork of Catoctin Creek. Biological and associated chemical monitoring finds

this segment of the South Fork of Catoctin Creek to be supporting the aquatic life use; however, observed effects are noted for total phosphorus and for mercury in sediment. Based on DEQ's 2018 305(b) report (still in draft format), this segment of the South Fork of Catoctin Creek is categorized as impaired for the aquatic life use based on benthic macroinvertebrate bioassessment, and the fish consumption use is categorized as insufficient information.

3. Discharge monitoring reports (DMR) submitted in compliance with the Permit show that the Town of Hamilton has reported that it exceeded discharge limitations contained in Part I.A.1 of the Permit as follows:
 - a. weekly quantity average maximum of total suspended solids (TSS) for September 2018, November 2018, December 2018, January 2019, and February 2019;
 - b. monthly quantity average of TSS for November 2018, December 2018, January 2019, and February 2019;
 - c. weekly concentration average maximum of TSS for December 2018;
 - d. monthly concentration average limit of TSS for December 2018;
 - e. weekly quantity average maximum of BOD5 for December 2018, February 2019, and May 2019;
 - f. weekly concentration average maximum of BOD5 for May 2019;
 - g. monthly concentration average of *E. coli* for December 2018;
 - h. weekly concentration average maximum of ammonia for January 2019, March 2019, April 2019, and May 2019; and
 - i. monthly concentration average of ammonia for January 2019, March 2019, April 2019, and May 2019.
4. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
5. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
6. NRO issued two Warning Letters and two Notices of Violation to the Town of Hamilton for the violations described above in paragraphs C(1) through C(5) as follows:
 - a. WL No. W2018-11-N-1007 dated November 14, 2018;

- b. WL No. W2019-02-N-1001 dated February 11, 2019;
 - c. Referral NOV No. W2019-03-N-0002 dated March 27, 2019;
 - d. NOV No. W2019-05-N-0012 dated May 21, 2019;
 - e. NOV No. W2019-06-N-0001 dated June 12, 2019; and
 - f. NOV No. W2019-07-N-0002 dated July 16, 2019.
7. On April 8, 2019, the Town of Hamilton submitted a written response the NOV that was issued March 27, 2019. The Town of Hamilton attributed the Permit effluent limit exceedances to inflow and infiltration (I&I) issues that regularly impact the facility with high flows during heavy rainfall events. Additionally, the Town of Hamilton stated that during a recent inspection several manholes were identified for future repairs, which should also help in controlling the I&I issues.
8. On July 15, 2019, DEQ staff performed an inspection of the Facility and a review of Facility records.
9. During the July 2019 inspection, DEQ staff observed several pieces of equipment that were inoperable or not functioning properly as follows:
- a. The UV intensity meters were displaying readings, but Facility staff could not verify the validity of the readings or confirm that the UV intensity meters were properly displaying data;
 - b. There were solids and vegetative growth in the area around the bar screen, and the bar screen was clogged with large grease balls and had at least one missing bar;
 - c. The Facility's aerators and air diffusers in all of the aeration basins had poor output that was not providing sufficient aeration, and were in need of maintenance or replacement; and
 - d. The comminutor and grit chamber were not operational.
10. Permit Part II.Q states: "Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit."

11. During the July 2019 inspection, DEQ staff observed that the Town of Hamilton did not have an updated operations and maintenance (O&M) manual for the Facility. The observed deficiencies included equipment with missing/incomplete information, and a lack of preventative maintenance logs/documentation.
12. Permit Part I.C.3 requires the Town of Hamilton to maintain a current O&M Manual for the treatment works that in accordance with VPDES Regulations, 9 VAC 25-31 and the Sewage Collection and Treatment Regulations, 9 VAC 25-790.

Permit Part I.C.3 also requires the Town of Hamilton to document any operational changes at the Facility in the O&M Manual within 90 days.

13. On July 26, 2019, DEQ staff met with representatives of the Town of Hamilton to discuss the enforcement case and the results of inspection performed by DEQ staff on July 15, 2019. The Town of Hamilton did not dispute the violations observed by DEQ staff concerning an O&M Manual for the Facility and the failure to properly operate and maintain equipment. The Town of Hamilton attributed these issues to the recent departure of staff that was responsible for the operation and maintenance of the treatment works.

After the departure of the two staff members primarily responsible for operation of the treatment works in early June 2019, the Town of Hamilton hired an environmental consultant that has been assisting the Town with resolving the non-compliance.

14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
15. The Department has issued no permits or certificates to the Town of Hamilton for the Facility other than VPDES Individual Permit No. VA0020974.
16. The unknown tributary to the South Fork of Catoctin Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
17. Based on DEQ review of submitted files, the Town of Hamilton’s NOV response, the results of the July 15, 2019 Facility inspection, the July 28, 2019 meeting between DEQ and representatives of the Town of Hamilton, and correspondence between DEQ and representatives of the Town of Hamilton, the Board concludes that the Town of Hamilton has violated conditions Part I.A.1, Part I.C.3, and Part II.Q of the Permit and 9 VAC 25-31-50, as described above in paragraphs C(1) through C(16).
18. In order for the Town of Hamilton to return the Facility to a state of compliance, DEQ staff and representatives of the Town of Hamilton have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders the Town of Hamilton, and the Town of Hamilton agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$16,100.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Town of Hamilton shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Town of Hamilton shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Town of Hamilton for good cause shown by the Town of Hamilton, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2019-07-N-0002 dated July 16, 2019, NOV No. W2019-06-N-0001 dated June 12, 2019, NOV No. W2019-05-N-0012 dated May 21, 2019, NOV No. W2019-03-N-0002 dated March 27, 2019, WL No. W2019-02-N-1001 dated February 11, 2019, and WL No. W2018-11-N-1007 dated November 14, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Town of Hamilton admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The Town of Hamilton consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Town of Hamilton declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Town of Hamilton to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Town of Hamilton shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Town of Hamilton shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town of Hamilton shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Town of Hamilton. Nevertheless, the Town of Hamilton agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the Town of Hamilton has completed all of the requirements of the Order;
 - b. The Town of Hamilton petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Town of Hamilton.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town of Hamilton from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Town of Hamilton and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the Town of Hamilton certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind the Town of Hamilton to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town of Hamilton.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Town of Hamilton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2019.

Thomas A. Faha, Regional Director
Department of Environmental Quality

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The Town of Hamilton voluntarily agrees to the issuance of this Order.

Date: 9/9/19 By: [Signature], mayor
(Person) (Title)
Town of Hamilton

Commonwealth of Virginia
City/County of Loudoun

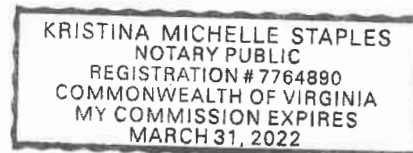
The foregoing document was signed and acknowledged before me this 9 day of
September, 2019, by David R Simpson who is
mayor of the Town of Hamilton, on behalf of the Town of
Hamilton.

[Signature]
Notary Public

7264890
Registration No.

My commission expires: 3/21/2019

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

The Town of Hamilton shall:

1. Within 30 days of the effective date of this Order, submit to DEQ the chain of custody and certificate of analysis documentation to support the June 2019 DMR submitted to DEQ by the Town of Hamilton.
2. Within 60 days of the effective date of this Order, submit to DEQ the following:
 - a. Documentation showing the UV intensity monitor(s) at the Facility have been investigated and repaired or replaced as needed, and have been returned to normal operation.
 - b. Documentation showing the solids and vegetative growth in the area around the bar screen at the Facility have been investigated and mitigated.
3. Within 90 days of the effective date of this Order, submit to DEQ the following:
 - a. Documentation showing the bar screen, comminutor, and grit chamber at the Facility have been investigated and repaired or replaced as needed, and have been returned to normal operation.
 - b. Documentation showing the air diffusers and aeration basins at the Facility have been investigated and repaired or replaced as needed, and have been returned to normal operation.
 - c. A written status update of the Town of Hamilton's collection system rehabilitation work concerning the recent survey of approximately 7,000 feet of piping and installation of ultrasonic flow meters in various manholes.
4. Within 120 days of the effective date of this Order, submit to DEQ the following:
 - a. An updated/revised O&M Manual for the Facility that meets the requirements of Permit Part I.C.3, 9 VAC 25-31 and 9 VAC 25-790. The O&M Manual shall include a prescribed operations plan for handling high flow surges (inflow) and longer range elevated flow events (infiltration) as outlined in the Town of Hamilton submission to DEQ dated August 7, 2019.
 - b. If necessary, a plan and schedule, for review and comment by DEQ, which lists any additional steps (not already listed above) the Town of Hamilton intends to take to come into compliance with the Permit's effluent discharge limits for TSS, BOD5, E. coli, and ammonia. The Town of Hamilton shall respond to DEQ's comments on the plan and schedule within 14 days or a later date approved by DEQ in writing. Once

notified by DEQ that the plan is acceptable, the Town of Hamilton shall implement said plan and schedule, which will become enforceable pursuant to this Order

5. Unless otherwise specified in this Order, the Town of Hamilton shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193